

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2005-050182

07/24/2008

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

LIFE TIME FITNESS INC

PAUL MOORE

v.

MARICOPA COUNTY, et al.

KATHLEEN A PATTERSON

TIMOTHY J BOJANOWSKI

UNDER ADVISEMENT RULING

(Valuation)

The Court begins with some words on *Eurofresh v. Graham County*, 521 Ariz.Adv.Rep. 21 (App. 2008). Plaintiff Life Time Fitness, Inc. did not argue that its facilities had in some way become obsolescent, which distinguishes the case *sub judice* from *Eurofresh*. The issue addresses by the Tax Court in *Eurofresh* “was whether under Arizona law, it was proper pursuant to standard appraisal methods to reduce replacement cost for external obsolescence without proof that the cause of such obsolescence affected the subject property.” *Id.* at ¶ 23 (internal citation omitted). The standard appraisal methods used in that case were the cost method and the market extraction method. In the cost method, the initial cost is a given and is reduced to ascertain the basis for tax valuation either by a set formula (e.g., statutory depreciation) or by an *ad hoc* adjustment to reflect factors unique to that property, or both. The Court of Appeals took issue with the *ad hoc* adjustment to Eurofresh’s greenhouses, finding that the adjustments were not adequately supported by evidence that the value of those greenhouses, as opposed to other greenhouses, was indeed reduced by economic obsolescence. The use of the market extraction method faced a similar problem for a different reason. Instead of making an arbitrary assumption about the proper deduction for obsolescence as in the cost method, the market extraction method uses the market value of comparable properties to determine the proper value of the subject property. While this method gives accurate results if the comparable properties are properly chosen, the choice of comparable properties must itself be shown to accurately isolate

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the distinguishing characteristics of the subject property, a determination requiring a similar evidentiary burden.

In the income method, the revenue derived from the property is objectively ascertainable using a universally accepted measurement (i.e., money). The Arizona statutes require that valuation be based on market value; the cause of a reduction in market value is relevant only if it is needed to establish the existence of a particularized reduction affecting that property as opposed to a systemic reduction reflected in the overall real estate market. Plaintiff's use of the income method in this case does not implicate the objections raised in *Eurofresh*.

In a case such as this, involving property which is to a considerable degree one of a kind, reasonable experts can differ greatly on the weighting of factors to be incorporated into the ultimate valuation. That said, the Court finds Mr. Lennhoff's testimony more persuasive.

The critical distinction is the status of ownership. The two fitness centers are held in fee simple, and were so appraised by Mr. Lennhoff; this focus required him to rely primarily on the income method, simply because there is little market and consequently few transactions for fitness centers held in fee simple. Mr. Kelly, on the other hand, relied on leased-fee sales. This has the advantage of drawing on a larger market, permitting in theory the use of the cost method and the sales comparison method. But where the prices obtained for the latter methods are not solely the result of supply and demand in the leasing market, calculations based on those prices, either directly or indirectly, yield a result that fails to accurately reflect market value, the touchstone of property taxation in Arizona. Plaintiff presented evidence that most fitness centers are not held in fee simple, as its own are, but are encumbered by restrictions and, more importantly, lease rates imposed as part of their financing packages. These financing arrangements do reflect the *anticipated* income potential of the facility, which to the extent that the projection proves accurate factors as well into market value; but they also reflect the creditworthiness of the borrower and the lender's uncertainty about the revenue projection, no part of market value. In the absence of a free market against which to test the results, removing their effects with any degree of reliability is a task that is virtually insurmountable. If there is no viable alternative, then the Court must work with what is available. Where one method, acceptable under USPAP standards and recognized by case law, avoids the difficulty, that method deserves greater weight.

The Court therefore finds and orders that Plaintiff has overcome the presumption of correctness afforded to the assessor's valuation, and has by a preponderance of the evidence established its valuation as the correct one. The proper valuation of the Tempe facility is at a full cash value of \$10,500,000.00 and of the Gilbert facility a full cash value of \$11,000,000.00.